

**CONTRACT #2**  
**RFS # 343.20-028**

**Department of Health**

**VENDOR:**  
**Tennessee Opportunity**  
**Programs, Inc. (TOPS)**



STATE OF TENNESSEE  
**DEPARTMENT OF HEALTH**  
CORDELL HULL BLDG.  
425 5TH AVENUE NORTH  
NASHVILLE TENNESSEE 37247

PHIL BREDESEN  
GOVERNOR

SUSAN R. COOPER, MSN, RN  
COMMISSIONER

September 19, 2007

Commissioner David Goetz  
Finance & Administration  
Tennessee Tower

**RECEIVED**

OCT 01 2007

**FISCAL REVIEW**

Dear Commissioner Goetz:

Submitted for your review and approval is a request to amend the fee for service contract FA-04-15894-03 with Tennessee Opportunity Programs, Inc. (TOPS). This contract is resultant from RFP 343.20-01 for the provision of personnel to conduct health related telephone surveys. The surveys consist of questions regarding health related behaviors that could have an adverse impact on the population's health. The current contract stipulates that TOPS provides up to twenty telephone interviewers, and administrative and supervisory staff to schedule, monitor and train the interviewers.

This amendment exercises the term extension clause. We are requesting to extend the term of the contract three (3) months and add additional funds for that period of performance. The reason for the short term extension is to make the contract term coincide with the expiration of the existing federal grant that primarily funds the contract, Behavioral Risk Factor Surveillance System (BRFSS) funded by the Centers for Disease Control and Prevention. The inconsistencies in the dates occurred due to difficulties we encountered releasing the original RFP. It has been difficult to administer the contract funding with the contract expiration date different from the state fiscal year and grant award year.

A new five year grant period for the BRFSS program will begin July 1, 2008. The Department is in the process of constructing a new RFP for the same service that will coincide with the new BRFSS grant funding cycle. It should be at the Office of Contract Review for initial review by October 1, 2007. The anticipated release date of the new RFP is February 1, 2008.

If you have any questions, please contact me at 741-5453.

Sincerely,

*Susan R. Cooper, MSN, RN*  
Susan R. Cooper, MSN, RN  
Commissioner

Cc: Marguerite Lewis  
David Ridings

# REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

Commissioner of Finance &amp; Administration

Date:

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS #

343.20-028-04

2) State Agency Name :

Department of Health

## EXISTING CONTRACT INFORMATION

3) Service Caption :

Provision of personnel to conduct statewide health related telephone surveys.

4) Contractor :

Tennessee Opportunity Programs, Inc. (TOPS)

5) Contract #

FA-04-15894-04

6) Contract Start Date :

April 1, 2004

7) Current Contract End Date IF all Options to Extend the Contract are Exercised :

March 31, 2008

8) Current Total Maximum Cost IF all Options to Extend the Contract are Exercised :

\$545,500

## PROPOSED AMENDMENT INFORMATION

9) Proposed Amendment #

04

10) Proposed Amendment Effective Date :

December 1, 2007

(attached explanation required if date is &lt; 60 days after F&amp;A receipt)

11) Proposed Contract End Date IF all Options to Extend the Contract are Exercised :

June 30, 2008

12) Proposed Total Maximum Cost IF all Options to Extend the Contract are Exercised :

\$597,175

13) Approval Criteria :  
(select one)

use of Non-Competitive Negotiation is in the best interest of the state



only one uniquely qualified service provider able to provide the service

14) Description of the Proposed Amendment Effects &amp; Any Additional Service :

Three (3) month term extension and additional funding.

15) Explanation of Need for the Proposed Amendment :

Three (3) month term extension to make the contract coincide with federal grant term which expires June 30, 2008.

**16) Name & Address of Contractor's Current Principal Owner(s) :**  
(not required if proposed contractor is a state education institution)

Gaila Fletcher, Executive Director, 1370 Hazelwood Drive, Suite 207, Smyrna, TN 37167

**17) Documentation of Office for Information Resources Endorsement :**  
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**18) Documentation of Department of Personnel Endorsement :**  
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**19) Documentation of State Architect Endorsement :**  
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

**20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :**

RFP in process to procure a vendor for the new federal grant period July 1, 2008 through June 30, 2013.

**21) Justification for the Proposed Non-Competitive Amendment :**

Exercising existing term extension clause, to have the contract term coincide with the federal grant cycle and state fiscal year will make administration of the contract easier.

**REQUESTING AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

*Brian R Cooper USN, RN*

Agency Head Signature

*9-28-07*

Date

# CONTRACT SUMMARY SHEET

021406

<b>RFS #</b>	<b>Contract #</b>
<b>343.20-028-04</b>	<b>FA-04-15894-04</b>
<b>State Agency</b>	<b>State Agency Division</b>
Department of Health	Policy, Planning & Assessment
<b>Contractor Name</b>	<b>Contractor ID # (FEIN or SSN)</b>
Tennessee Opportunity Programs, Inc.	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 23-7292125-00

<b>Service Description</b>			
For provision of a monthly statewide interviewing systems of residents of Tennessee - Amendment #4			
<b>Contract BEGIN Date</b>	<b>Contract END Date</b>	<b>Subrecipient or Vendor?</b>	<b>CFDA #</b>
4/1/2004	6/30/2008	Vendor	93.945

<b>Mark Each TRUE Statement</b>	
<input checked="" type="checkbox"/> Contractor is on STARS as required	<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts as required

<b>Allotment Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>	<b>Funding Grant Code</b>	<b>Funding Subgrant Code</b>
343.20	see attached	139	11	2T0	

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2004		\$ 19,284.18			\$ 19,284.18
2005		\$ 110,767.82			\$ 110,767.82
2006		\$ 138,215.00		\$ 15,050.00	\$ 153,265.00
2007		\$ 125,933.00		\$ 13,000.00	\$ 138,933.00
2008		\$ 163,425.00		\$ 11,500.00	\$ 174,925.00
2009					\$ -
<b>TOTAL</b>	\$ -	\$ 557,625.00	\$ -	\$ 39,550.00	\$ 597,175.00

<b>COMPLETE FOR AMENDMENTS ONLY</b>			<b>State Agency Fiscal Contact &amp; Telephone</b>
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	Crystal Allen, 741-9419
2004	\$ 19,284.18		<b>State Agency Budget Officer Approval</b>
2005	\$ 110,767.82		
2006	\$ 153,265.00		
2007	\$ 138,933.00		
2008	\$ 123,250.00	\$ 51,675.00	
2009			
<b>TOTAL</b>	\$ 545,500.00	\$ 51,675.00	
<b>End Date</b>	3/31/2008	6/30/2008	

<b>Contractor Ownership</b> (complete only for base contracts with contract # prefix FA or GR)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business <input type="checkbox"/> NOT disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> OTHER minority/disadvantaged—Nonprofit

<b>Contractor Selection Method</b> (complete for ALL base contracts—N/A to amendments or delegated authorities)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method	
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (eg, ID, GG, GU)	<input type="checkbox"/> Other	

<b>Procurement Process Summary</b> (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)
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RFP 343.20-001 -- three (3) month term extension.

## CONTRACT SUMMARY SHEET SUPPLEMENT

FA-04-15894-03

2004

[illegible]

## CONTRACT SUMMARY SHEET SUPPLEMENT

FA-04-15894-03

2005

[illegible]

# CONTRACT SUMMARY SHEET SUPPLEMENT

[illegible]



## CONTRACT SUMMARY SHEET SUPPLEMENT

Contract Number		FA-04-15894-03					
Fiscal Year		2007					
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA #	Amount
343.20	20	139	11	2T0		93.945	\$116,933.00
343.20	76	139	11	3E0		93.946	\$9,000.00
343.20	01	139	11				\$13,000.00
<b>TOTAL</b>							\$138,933.00

[illegible]

**AMENDMENT 04  
TO FA-04-15894-04**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Health, hereinafter referred to as the "State", and Tennessee Opportunity Programs, Inc., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section B.1 is deleted in its entirety and replaced with the following:
  - B.1. Contract Term. This Contract shall be effective for the period commencing on April 1, 2004 and ending June 30, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
2. The text of Contract Section C.1 is deleted in its entirety and replaced with the following:
  - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Hundred Ninety Seven Thousand One Hundred and Seventy Five dollars (\$597,175). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The revisions set forth herein shall be effective December 1, 2007. All other terms and conditions not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF:**

**TENNESSEE OPPORTUNITY PROGRAMS, INC.:**

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Gaila Fletcher, Executive Director

DATE

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GAILA FLETCHER, Executive Director

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY

**TENNESSEE DEPARTMENT OF HEALTH:**

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**SUSAN R. COOPER, MSN, RN, Commissioner**

**DATE**

**APPROVED:**

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**M. D. GOETZ, JR., COMMISSIONER  
DEPARTMENT OF FINANCE AND ADMINISTRATION**

**DATE**

**Not Applicable**

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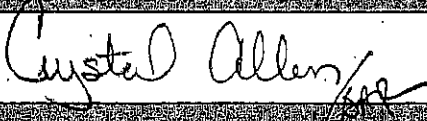
**DEBORAH E. STORY, COMMISSIONER  
DEPARTMENT OF HUMAN RESOURCES**

**DATE**

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**JOHN G. MORGAN, COMPTROLLER OF THE TREASURY**

**DATE**

RF#		Contract #	
343.20-028-04		FA-04-15894-03	
State Agency		State Agency Division	
Department of Health		Policy, Planning & Assessment	
Contractor Name		Contractor ID # (FEIN or SSN)	
Tennessee Opportunity Programs, Inc.		<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 23-7292125-00	
Service Description			
For provision of a monthly statewide interviewing systems of residents of Tennessee - Amendment #3			
Contract BEGIN Date	Contract END Date	Subrecipient or Vendor?	CFDA #
4/1/2004	3/31/2008	Vendor	93.945
Mark Each TRUE Statement			
<input checked="" type="checkbox"/> Contractor is on STARS as required		<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts as required	
Allocation Code	Cost Center	Object Code	Fund
343.20	see attached	139	11
Funding Grant Code		Funding Subgrant Code	
2T0			
BY	State	Federal	Interdepartmental
2004		\$ 19,284.18	
2005		\$ 110,767.82	
2006		\$ 138,215.00	\$ 15,050.00
2007		\$ 125,933.00	\$ 13,000.00
2008		\$ 111,750.00	\$ 11,500.00
TOTAL		\$ -	\$ 39,550.00
TOTAL		\$ 505,950.00	\$ 545,500.00
COMPLETE FOR AMENDMENTS ONLY		State Agency Fiscal Contact & Telephone #	
BY	Base Contract & Prior Amendments	THIS Amendment ONLY	Crystal Allen, 741-9419
2004	\$ 19,284.18		State Agency Budget Officer Approval 
2005	\$ 110,767.82		
2006	\$ 153,265.00		
2007	\$ 60,000.00	\$ 78,933.00	
2008		\$ 123,250.00	Funding Certification (certification required by F.C.A. § 9-45-113 that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
TOTAL	\$ 343,317.00	\$ 202,183.00	
End Date	3/31/2006	3/31/2008	
Contractor Ownership (complete only for base contracts with contract # prefix FA or GP)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> OTHER minority/disadvantaged - Nonprofit
Contractor Selection Method (complete for ALL base contracts - N/A to amendments or delegated authorities)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method	
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (eg, ID, GG, GU)	<input type="checkbox"/> Other	
Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)			
RFP 343.20-001, term extension year four and adding additional language to allow for conducting additional survey pertaining to behaviors relating to adverse health outcomes. TOPS has proven their ability to conduct telephone surveys pertaining to confidential and sensitive private health information to ensure compliance to HIPAA. TOPS also is trained in the utilization of a CATI automated telephone interviewing system. Given the nature of the surveys, hours of operation, training requirements, and the low volume of the PRAMS survey to conduct, it was determined to be in the best interest of the State to utilize the existing contractor.			

NOV 2 2008

26 ACCOUNT

# CONTRACT SUMMARY SHEET SUPPLEMENT

FA-04-15894-03

2004

[illegible]

8 10 12 14

8 10 12 14

## CONTRACT SUMMARY SHEET SUPPLEMENT

FA-04-15894-03

2006

[illegible]





## CONTRACT SUMMARY SHEET SUPPLEMENT

FA-04-15894-02

2008

[illegible]

**AMENDMENT 03  
TO FA-04-15894-00**

This Contract by and between the State of Tennessee, Department of Health, hereinafter referred to as the State, and Tennessee Opportunity Programs, Inc., hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section B.1 in its entirety and insert the following in its place:

B.1. Contract Term. This Contract shall be effective for the period commencing on April 1, 2004 and ending March 31, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. Delete Section C.1 in its entirety and insert the following in its place:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Hundred Forty-Five Thousand Five Hundred dollars (\$545,500). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

3. Delete the first paragraph on page one in its entirety and insert the following in its place:

This Contract, by and between the State of Tennessee, Department of Health, hereinafter referred to as the "State" and Tennessee Opportunity Programs, Inc. (TOPS), hereinafter referred to as the "Contractor," is for the provision of personnel to conduct monthly statewide telephone surveys that will gather information for the Behavioral Risk Factor Surveillance Survey (BRFSS), Pregnancy Risk Assessment and Monitoring Survey (PRAMS), and other health related surveys on an as needed basis as further defined in the "SCOPE OF SERVICES."

4. Delete Section A.1 in its entirety and insert the following in its place:

A.1. The Contractor shall:

- a. Conduct, by telephone, a prepared, State approved, statewide Behavioral Risk Factor Surveillance Survey to determine the prevalence rates of lifestyles of adult Tennesseans, as required by federal grant number U58/CCU422782, the Chronic Disease Prevention & Health Promotion Programs Cooperative Agreement, which began on June 30, 2003, and continues through June 29, 2008. The data results will be collected electronically and stored electronically on the Department of Health's Network Server and periodically forwarded to Centers for Disease Control (CDC) throughout a survey year. Results of the data analysis by CDC will be returned to the state within six months of the completion of a survey year.
- b. Conduct, by telephone, a prepared, State approved, statewide Pregnancy Risk Assessment and Monitoring Survey to determine the prevalence rates of lifestyles of new birth mothers in Tennessean, as required by federal grant number UR6/DP000528, Pregnancy Risk Assessment and Monitoring System Cooperative Agreement, which began on April 15, 2006, and continues through April 14, 2011. The data results will be collected electronically utilizing the CDC supplied WinCATI automated interviewing software and stored electronically on the Department of Health's Network Server. The data collected will be periodically forwarded to Centers for Disease Control (CDC) throughout a survey year. Surveyors and supervisory staff will be trained by the State in the use of the WinCATI software, recording responses and comments, handling sensitive situations, human subjects training, call dispositions and interviewer monitoring.
  - i. Interviewers and supervisory staff will be trained initially by the State in the use of the WinCATI software, recording responses and comments, handling sensitive situations, human subjects training, call dispositions and interviewer monitoring. Subsequent training of personnel will be provided by the Contractor.
  - ii. Supervisory staff shall monitor interviewers at least 10% of the time that calls are being placed to determine whether the interviewer is appropriately consenting women, administering the interviews, protecting the mother's confidentiality, responses are recorded accurately and keeping data collection forms and their stations secure. A monthly monitoring report shall be submitted to the State.
- c. Conduct, by telephone, other prepared, State approved, health related surveys on an as needed basis, contingent on available Contractor staff resources.
- d. Provide up to 20 telephone interviewers who will be able to conduct the telephone survey during evenings on weekdays and during the morning and afternoon on weekends.
- e. Provide one administrative supervisor position, two supervisor positions and up to 20 telephone interviewer positions to conduct the survey. A brief job description of each position is given below.

#### Administrative Supervisor

The administrative supervisor will be responsible for scheduling interviewers and making sure the survey is conducted properly. The person will not be responsible for compilation, editing or archiving data results. At times, conducts interviews. Serves as primary trainer of new staff.

#### Supervisor

The survey supervisor is responsible for managing interviewing staff during individual survey sessions; assists administrative supervisor in scheduling and training; and at times conduct interviews.

#### Interviewers

Conduct individual interviews by telephone of randomly selected adults who are residents of the state. Should have skill in using a personal computer.

6. Add the following as Section A.2.e and renumber any subsequent sections as necessary:

A.2.e Provide telephone numbers and perform telephone number searches.

7. Add the following as Section D.20 and renumber any subsequent sections as necessary:

D.20. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document as Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

TENNESSEE OPPORTUNITY PROGRAMS, INC.:

Gaila Fletcher  
Gaila Fletcher, Executive Director

10/30/06  
DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY

TENNESSEE DEPARTMENT OF HEALTH

Kenneth S. Robinson, M.D. Jr  
Kenneth S. Robinson, M.D., Commissioner

10/17/06  
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr. /sgt  
M. D. Goetz, Jr., Commissioner

NOV 14 2006  
Date

DEPARTMENT OF PERSONNEL:

Not Applicable

DEBORAH E. STORY, COMMISSIONER

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan  
John G. Morgan, Comptroller of the Treasury

11-21-06  
Date

## ATTACHMENT 1

## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	FA-04-15894-03
CONTRACTOR LEGAL ENTITY NAME:	Tennessee Opportunity Programs, Inc. (TOPS)
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	23-7292125

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE &amp; DATE:

Darla Fletcher 12/04/06

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.



Contract #		343.20-028-04		FA-04-15894-02	
State Agency		Department of Health		State Agency Division	
		Policy, Planning & Assessment			
Contractor Name		Tennessee Opportunity Programs, Inc.		Contractor ID # (FEIN or SSN)	
		C- or X V- 23-7292125-00			
Service Description					
For provision of a monthly statewide interviewing system of adult residents of Tennessee - Amendment #2					
Contract BEGIN Date		Contract END Date		Subrecipient or Vendor?	
4/1/2004		3/31/2007		Vendor	
				CFDA #	
				93.945	
Mark If Statement is TRUE					
<input checked="" type="checkbox"/> Contractor is on STARS as required		<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts as required			
Allotment Code		Cost Center		Object Code	
343.20		see attached		139	
Fund		Funding Grant Code		Funding Subgrant Code	
11		2T0			
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2004		\$ 19,284.18			\$ 19,284.18
2005		\$ 110,767.82			\$ 110,767.82
2006		\$ 118,215.00		\$ 15,050.00	\$ 133,265.00
2007		\$ 80,000.00			\$ 80,000.00
					\$ -
					\$ -
TOTAL	\$ -	\$ 328,267.00	\$ -	\$ 15,050.00	\$ 343,317.00
COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone #		
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Crystal Allen, 741-9419		
2004	\$ 19,284.18				
2005	\$ 110,767.82				
2006	\$ 92,665.00	\$ 40,600.00	State Agency Budget Officer Approval		
2007		\$ 80,000.00	Crystal Allen		
			Funding Certification (certification required by T.C.A. § 9-4-5113 that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)		
TOTAL	\$ 222,717.00	\$ 120,600.00	12/29/05		
End Date	3/31/2006	3/31/2007			
Contractor Ownership					
<input type="checkbox"/> African American	<input type="checkbox"/> Disabled	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> NOT minority/disadvantaged	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> OTHER minority/disadvantaged—	Nonprofit Org.	
Contractor Selection Method					
<input checked="" type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation		<input type="checkbox"/> Alternative Procurement Method		
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Government		<input type="checkbox"/> Other		
Procurement Process Summary					

RFP 343.20-001, term extension (page 2)

DEC 2 2005

## CONTRACT SUMMARY SHEET SUPPLEMENT

<b>Contract Number</b>		FA-04-15894-02					
<b>Fiscal Year</b>		2004					
<b>Allotment Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>	<b>Grant Code</b>	<b>Subgrant Code</b>	<b>CFDA #</b>	<b>Amount</b>
343.20	20	139	11	2T0		93.945	\$19,284.18
<b>TOTAL</b>							\$19,284.18

[illegible][illegible][illegible][illegible][illegible][illegible]

[illegible]

Fiscal Year

FA-04-15894-02

2006

[illegible]

## CONTRACT SUMMARY SHEET SUPPLEMENT

[illegible]

**AMENDMENT 02  
TO FA-04-15894-00**

This Contract by and between the State of Tennessee, Department of Health, hereinafter referred to as the State, and Tennessee Opportunity Programs, Inc., hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section B.1 in its entirety and insert the following in its place:

B.1. Contract Term. This Contract shall be effective for the period commencing on April 1, 2004 and ending March 31, 2007. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

1. Delete Section C.1 in its entirety and insert the following in its place:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Hundred Forty-Three Thousand Three Hundred Seventeen dollars (\$343,317). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

TENNESSEE OPPORTUNITY PROGRAMS, INC. (TOPS):

Gaila Fletcher  
Gaila Fletcher, Executive Director

12/05/05  
Date

TENNESSEE DEPARTMENT OF HEALTH

Kenneth S. Robinson, MD  
Kenneth S. Robinson, M.D., Commissioner

11/30/05  
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr.  
M. D. Goetz, Jr., Commissioner

12/21/05  
Date

DEPARTMENT OF PERSONNEL:

N/A  
Randy C. Camp, Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan  
John G. Morgan, Comptroller of the Treasury

12.22.05  
Date

S064

S T A R S  
DOCUMENT FILE12/29/05  
08:10

DIRECT ACCESS:

FUNCTION: N (I, N), F1-HELP, F2-RETURN TO MENU, F4-END DIRECT ACCESS

DEPT: 343 DIV: 20 FFY: 06 FUND: 11 DOC NO: FA0415894 01 GL ACCT: 0450  
PERIOD SELECTION: CMB (CMB PMB PY)

DESCRIPTION: 040104 MONTHLY INTERVIEW SYSTEM-ADULTS

COST CENTER: 20 OBJ: 139 AGY OBJ: SRC: AGY SRC:  
ORG CODE: 05 PROJECT: LOCATION:  
PGM CODE: 038 003 GRANT: 2T6 RSK SUB ACCT:  
VENDOR NO: V237292125 00 VENDOR NAME: TENN OPPORTUNITY PROGRAM

DATE SEGMENT	DOCUMENT AMT:	
CREATE: 092305	ADJUSTMENTS:	77,615.00
LAST PROC: 121605	LIQUIDATIONS:	.00
CLOSE:	RECEIPT/PYMT:	44,083.23-
DUE:	RETENTION:	44,083.23
DOCUMENT: 0331067		.00
	BALANCE	33,531.77

Z07 NEXT REC DISPLAYED  
Z41 ENTER INQUIRY DATA

508 <sup>F</sup> 01 \$33,531.77

506 03 \$33,531.77 03/31/07

507 03 \$40,600.00



## CONTRACT SUMMARY SHEET

Request Number	343.20-028-04		FA-04-15894-01
State Agency	Tennessee Department of Health	Division	Policy, Planning & Assessment

Contractor		Contractor Identification Number	
Tennessee Opportunity Programs, Inc.	X	V-	23-7292125-00
		C-	

Service Location	Service Description	Service Dates

For provision of a monthly statewide interviewing system of adult residents of Tennessee - Amendment #1.

Contract Begin Date	Contract End Date
April 1, 2004	March 31, 2006

Account Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
343.20	<del>20 &amp; 01</del> <i>see attached</i>	139	11	X on STARS		

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (Include ALL amendments)
04		\$19,284.18			\$19,284.18
05		\$110,767.82			\$110,767.82
06		\$77,615.00		\$15,050.00	\$92,665.00
					\$0.00
					\$0.00
					\$0.00
2011	\$0.00	\$207,667.00	\$0.00	\$15,050.00	\$222,717.00

CFDA Number		93.945	Check the box (below) ONLY if the answer is YES	
State Fiscal Contact			Is the Contractor a SUBSEQUENT? (per GME A-133)	
Name	Wayne Pierson		Is the Contractor a VENDOR? (per GME A-133)	X
Address	10th Floor, Andrew Johnson Tower		Is the Fiscal Year funding STRICTLY LIMITED?	
Phone	532-7148		Is the Contractor on STARS?	X

Procuring Agency Budget Officer Signature	Is the Contractor's Form W-9 ATTACHED?	
Wayne Pierson /dp	Is the Contractor's Form W-9 filled with Accounts?	X
	Funding Contribution	
Pursuant to T.C.A., Section 9-6-113, I, M.D. Goetz, M.D., Commissioner of		

COMPLETE FOR ALL AMENDMENTS (only)			
		Base Contract & Prior Amendments	Amendment ONLY
End Date		March 31, 2005	March 31, 2006
PY	04	\$19,284.18	
FT	05	\$84,767.82	\$26,000.00
PY	06		\$92,665.00
FT			
PY			
FT			
Totals		\$104,052.00	\$118,665.00

FA-04-15894-

RFS-343 20-028

2004

[illegible]





**AMENDMENT 01  
TO FA-04-15894-00**

This Contract by and between the State of Tennessee, Department of Health, hereinafter referred to as the State, and Tennessee Opportunity Programs, Inc., hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section B.1 in its entirety and insert the following in its place:

B.1. Contract Term. This Contract shall be effective for the period commencing on April 1, 2004 and ending March 31, 2006. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

1. Delete Section C.1 in its entirety and insert the following in its place:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Two Hundred Twenty-Two Thousand Seven Hundred Seventeen dollars (\$222,717). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

TENNESSEE OPPORTUNITY PROGRAMS, INC. (TOPS):

Gaila Fletcher  
Gaila Fletcher, Executive Director

2/14/05  
Date

TENNESSEE DEPARTMENT OF HEALTH

Kenneth S. Robinson, M.D.  
Kenneth S. Robinson, M.D., Commissioner

2/6/05  
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr.  
M. D. Goetz, Jr., Commissioner

3/4/05  
Date

DEPARTMENT OF PERSONNEL:

NA  
Randy C. Camp, Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan  
John G. Morgan, Comptroller of the Treasury

3-7-05  
Date

RFS 343.20-028-04

FA-04-15894-00

Tennessee Department of Health

Policy, Planning &amp; Assessment

Tennessee Opportunity Programs, Inc.

X

V-

C-

23-7292125-00

or provision of a monthly statewide interviewing system of adult residents of Tennessee.

April 1, 2004

March 31, 2005

Allocation Code	Cost Center	Object Code	Fund	Program	Activity	Subgrant Code
343.20	20	139	11	X	on STARS	2004
04		\$104,052.00				\$104,052.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
	\$0.00	\$104,052.00		\$0.00	\$0.00	\$104,052.00

93.945

10th Floor, Andrew Johnson Tower

741-1614

George Womack/ap

Pursuant to T.C.A., Section 9-6-113, I, M.D. Goetz, M.D., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.

JUL 13 2004

RECEIVED

JUL 13 2004

Subject Review

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF HEALTH  
AND  
TENNESSEE OPPORTUNITY PROGRAMS, INC.**

This Contract, by and between the State of Tennessee, Department of Health, hereinafter referred to as the "State" and Tennessee Opportunity Programs, Inc. (TOPS), hereinafter referred to as the "Contractor," is for the provision of personnel to conduct a monthly statewide telephone survey that will gather information for the Behavioral Risk Factor Surveillance Survey (BRFSS) as further defined in the "SCOPE OF SERVICES."

The Contractor is a nonprofit corporation.

The Contractor's address is:

P. O. Box 925  
Smyrna, TN 37167

The Contractor's place of incorporation or organization is Tennessee.

**A. SCOPE OF SERVICES:**

**A.1. The Contractor shall:**

- a. Conduct, by telephone, a prepared, State approved, statewide Behavioral Risk Factor Surveillance Survey to determine the prevalence rates of lifestyles of adult Tennesseans, as required by federal grant number U58/CCU422782, The Chronic Disease Prevention & Health Promotion Programs Cooperative Agreement, which began on June 30, 2003, and continues through June 29, 2008. The data results will be collected electronically and stored electronically on the Department of Health's Network Server and periodically forwarded to Centers for Disease Control (CDC) throughout a survey year. Results of the data analysis by CDC will be returned to the state within six months of the completion of a survey year.
- b. Provide up to 20 telephone interviewers who will be able to conduct the telephone survey during evenings on weekdays and during the morning and afternoon on weekends.
- c. Provide one administrative supervisor position, two supervisor positions and up to 20 telephone interviewer positions to conduct the survey. A brief job description of each position is given below.

Administrative Supervisor

The administrative supervisor will be responsible for scheduling interviewers and making sure the survey is conducted properly. The



person will not be responsible for compilation, editing or archiving data results. At times, conducts interviews. Serves as primary trainer of new staff.

#### Supervisor

The survey supervisor is responsible for managing interviewing staff during individual survey sessions; assists administrative supervisor in scheduling and training; and at times conduct interviews.

#### Interviewers

Conduct individual interviews by telephone of randomly selected adults who are residents of the state. Should have skill in using a personal computer.

#### A.2. The State shall:

- a. Provide training and technical assistance in the assistance in how to conduct the telephone survey.
- b. Provide all workstations, telephones, and phone service needed for performing the survey.
- c. Provide state approved survey questions for the interviewers to use when conducting the risk behavior survey.
- d. Retain the right to approve the Contractor' selection of personnel who will be conducting the telephone interviews.

#### B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on April 1, 2004 and ending March 31, 2005. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

#### C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Hundred Four Thousand Fifty-Two dollars (\$104,052). The

Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Payment Rates in Section C.3 and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to increase for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Payment Rates:

<u>SERVICE UNIT</u>	<u>AMOUNT</u>
Administrative Supervisor.	\$20.00/hr.
Supervisor(s)	\$17.43/hr.
Interviewer(s)	\$15.32/hr.

The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such

payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the

prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its

usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail,

postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Contract Administrator  
Office of Policy, Planning, & Assessment  
Tennessee Department of Health  
6<sup>th</sup> Floor, Cordell Hull Building  
425 Fifth Avenue North  
Nashville, Tennessee 37247  
Phone: 615-741-0352  
Fax: 615-253-5187

The Contractor:

Gaila Fletcher  
Executive Director  
Tennessee Opportunity Programs, Inc.  
P. O. Box 925  
Smyrna, TN 37167  
Phone: 615-459-3600  
Fax: 615-459-9326

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish

such information and data upon request of the State, in accordance with the Contract and applicable State law.

E5. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.6. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.7. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's

information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.8. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.9. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

E.10. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be



required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.11. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.12. HIPAA Compliance. The Contractor warrants to the State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract. The Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both parties will be in compliance with HIPAA, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations. The Contractor will sign any documents that are reasonably necessary to keep the State and the Contractor in compliance with HIPAA, including, but not limited to, business associate agreements.


IN WITNESS WHEREOF:

TENNESSEE OPPORTUNITY PROGRAMS, INC. (TOPS):

  
Gaila Fletcher, Executive Director

3/17/04  
Date

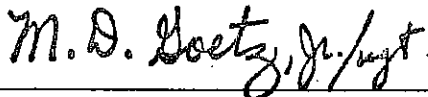
TENNESSEE DEPARTMENT OF HEALTH

  
Kenneth S. Robinson, Commissioner

3/8/04  
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

  
M. D. Goetz, Jr., Commissioner

MAY 27 2004  
Date

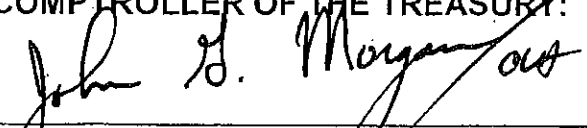
DEPARTMENT OF PERSONNEL:

**NOT APPLICABLE**

Randy C. Camp, Commissioner

Date

COMPTROLLER OF THE TREASURY:

  
John G. Morgan, Comptroller of the Treasury

6-02-04  
Date